

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 90-588-G - ORDER NO. 95-78✓
JANUARY 19, 1995

IN RE: South Carolina Pipeline Corporation -) ORDER
Maximum Rates for Industrial Customers.) DENYING
) RECONSIDERATION
)

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Reconsideration of our Order No. 94-1244, filed by the South Carolina Energy Users Committee (SCEUC). South Carolina Pipeline Corporation (Pipeline or the Company) filed a Return to the Petition. For the reasons elucidated below, this Petition must be denied.

First, SCEUC states that the Commission found in 1990, in Docket No. 90-204-G, that the industrial customers of Pipeline were not part and party of the rate case, examining the rate levels for the the sale-for-resale customers of Pipeline. The Commission then, according to SCEUC, in Order No. 94-1244, found that the sale-for-resale customers were part and party of the rate case examining rates of industrial customers. SCEUC states that in light of these actions, that it either exhausted its administrative remedies on October 17, 1990, or would never be able to exhaust its administrative remedies as required by the

Supreme Court in Nucor Steel v. South Carolina Public Service Commission, ___ S.C.___, 439 S.E.2d 270 (1994).

The Commission does not find this portion of SCEUC's Petition to be persuasive. First, the Commission did not find that Pipeline's industrial customers were not part and party of Docket No. 90-204-G. Rather, the Commission merely decided that it would open a new Docket, Docket No. 90-588-G, to examine the maximum markup for industrial customers. See, Order No. 90-729, Docket No. 90-204-G at 40. We recognized in that Order that sale-for-resale customers are proper parties in this Docket because of the potential impact on their rates. SCEUC's first allegation therefore constitutes no basis for reconsideration of Order No. 94-1244.

Secondly, SCEUC states that the Commission, without notice to SCEUC, issued Order No. 94-478 on May 19, 1994, dissolving the Stay, that the request for Stay was to preserve the status quo and the rights of all parties. SCEUC again alleges that in light of these actions, SCEUC has exhausted administrative remedies on October 17, 1990, or will never be able to exhaust administrative remedies as required by the Supreme Court.

The Commission believes that it properly lifted the Stay in this matter, the purpose of the Stay having been served. These allegations therefore constitute no basis for reconsideration of Order No. 94-1244.

Further, SCEUC states that the Commission published through its Staff, a full rate case for Pipeline, but that in Order No.

94-1244, the Commission refused audits from 1990 to the present, and that as a result of this, SCEUC has either exhausted its remedies, or will never be able to exhaust its remedies.

The Commission holds that our refusal to conduct updated rate case audits is reasonable, as the Stay alluded to by SCEUC merely had the effect of holding this proceeding in abeyance and stopping the Commission from going forward until SCEUC's request for Judicial Review was disposed of. We correctly held, as verified by the South Carolina Supreme Court, that, indeed, it is reasonable to set rates for sale-for-resale customers by one methodology while using another methodology for setting maximum markups of industrial customers. We therefore believe that SCEUC's Stay ground has no merit.

Also, SCEUC states that the Commission found in 1990 that it would not consider evidence on issues of rate-of-return nor cost of service in setting the maximum rates for industrial customers. SCEUC states that in Order No. 94-1244, the Commission restates these limitations for Docket No. 90-588-G. SCEUC states that this finding denies past and present opportunities, if any ever existed, for SCEUC to exhaust administrative remedies.

The Commission believes that its prior ruling was correct, and certainly did not deprive SCEUC of the opportunity to exhaust administrative remedies. The Commission also holds that this decision is consistent with the Supreme Court opinion in Nucor Steel, supra. It should be noted that the Supreme Court reversed two Circuit Court Orders and reinstated the Commission's original

Orders in these Dockets. The Commission properly recognized in Order No. 94-1244 the vitality of its earlier rulings.

It should be noted that nothing in the Commission's Docket No. 90-204-G Orders, or in Order No. 94-1244 is inconsistent with the Supreme Court Opinion in Nucor Steel. In those Supreme Court decisions, the Court reinstated the Docket No. 90-204-G orders unconditionally. Furthermore, the Supreme Court states that the Commission had not rejected rate of return as a basis for setting rate caps, but only as the exclusive methodology for determining industrial rates. Thus, the Court upheld the Commission's rejection of rate of return as the basis for establishing industrial rate caps in this Docket. The broad ambiance of the ratemaking discretion that the Commission could have exercised was affirmed by the Court, stating that the Commission can establish rate caps using rate of return, and that if used, the rate of return would have to be documented fully in the evidence. The Court did not state that the Commission must use rate of return to establish appropriate caps. The Commission's decision is therefore consistent with the Supreme Court opinion reinstating the Commission's earlier Orders. Therefore, paragraph D of the Petition for Reconsideration is invalid, and constitutes no basis for reconsidering Order No. 94-1244.

Further, the issue of Pipeline's maximum markup for natural gas service to industrial customers is before the Commission in this Docket. Indeed, it is the only issue before the Commission in this Docket. SCEUC has never identified any other issues for

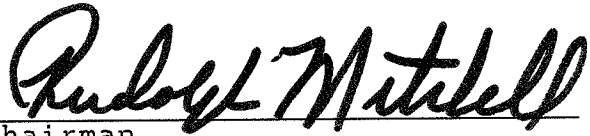
which administrative remedies may have been exhausted. Therefore, the Commission holds that the upcoming proceeding will afford SCEUC an opportunity to exhaust its administrative remedies regarding the appropriate level of maximum margins for natural gas service to industrial users within the parameters previously established by this Commission and upheld by the Supreme Court.

The Commission has examined the remaining allegations of the Petition, and holds that no constitutional rights were violated by Order No. 94-1244, nor was the Order contrary to the positions of the Commission before the Supreme Court. Further, the Commission holds that it had full authority to issue Orders as issued, and has not done so under unlawful procedures.

For these reasons, the Petition for Reconsideration is therefore denied.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)